

McNamara Declaration

Exhibit 35

January 11, 2018

By UPS and Email [REDACTED] [@archive.org](mailto:[REDACTED]@archive.org)

Brewster Kahle
Founder and Digital Librarian
Internet Archive
300 Funston Ave.
San Francisco, CA 94118

Re: Open Library's Distribution of Copyrighted Works

Dear Mr. Kahle:

I am Assistant General Counsel of HarperCollins Publishers, and I write regarding copyright concerns we have in connection with the Internet Archive's Open Library project.

It appears that Open Library is distributing unauthorized digital copies of hundreds of books to which we and our affiliate companies hold the exclusive publication rights. Below are examples:

1. MAP OF BONES by James Rollins
2. THE PURPOSE DRIVEN LIFE by Rick Warren
3. DO NOT DISTURB by Christie Ridgway
4. GOOD TO GREAT AND THE SOCIAL SECTORS by Jim Collins

Screenshots from the books' Open Library pages are annexed hereto as Exhibit A. As far as we can tell, Open Library is making digital copies of the books available to its users without authorization. The digital copies are unauthorized reproductions of our books, and their distribution is unauthorized. Based on the information available to us, we do not see how it is not copyright infringement. And this is but a sample of the HarperCollins books freely available on Open Library's platform.

We are aware of Open Library's Sonny Bono Memorial Collection as described in the November 30, 2017 article in *Slate* titled, "The Copyright Mavericks: The geniuses behind the Wayback Machine have a new way to help libraries bring old books to the public." The Sonny Bono Memorial Collection, available at <https://archive.org/details/last20m>, purports to fall within the Copyright Act's Section 108(h) exception to infringement for certain activities relating to certain works in their last twenty years of copyright. The works we are concerned about, however, are not among the 61 books that currently make up the Collection.

Nor do we see how the first sale doctrine, 17 U.S.C. § 109, could exempt Open Library's activity from infringement. While Open Library would be free to loan out lawfully made physical copies of copyrighted books, the first sale doctrine does not apply to Open Library's distribution of digital scans or other digital versions of the physical copies.

January 11, 2018

We also have confirmed with our authorized library distributors that they are not working with the Internet Archive or the Open Library project, and we note that Open Library's distribution of DAISY-format versions of our books is not a subject of this letter.¹

Open Library's unauthorized distribution of our books also seems to go beyond the scope of Open Library's stated purpose. Open Library describes itself on its website home page as "an open, editable library catalog, building towards a web page for every book ever published." The FAQ section of the website describes further how Open Library, where possible, provides WorldCat and retailer links to help users legitimately borrow or buy books. But when Open Library is the entity directly providing copies of the books, it is acting as far more than just an online library catalog. We might question whether libraries and other organizations would donate books to the Open Library project if they were aware of the extent of Open Library's active distribution role.

All that said, we welcome an explanation if we are not understanding how Open Library's reproduction and direct distribution of copyright-protected digital copies of books to which we hold exclusive publication rights is not infringement. We otherwise demand that you immediately disable the "Borrow eBook" function for our books still under copyright, and that you provide us with the number of times the digital versions of all such books have been checked out or otherwise accessed by Open Library users, itemized by ISBN.

I can be reached at [REDACTED]@harpercollins.com or [REDACTED]. Thank you for your attention to this matter, and we look forward to hearing from you.

This letter does not represent a complete statement of HarperCollins' position and is without prejudice to our legal and equitable rights and remedies, all of which are expressly reserved.

Sincerely yours,



Victor Hendrickson

Encls.




cc:
Internet Archive Copyright Agent (info@archive.org)
Internet Archive
300 Funston Ave.
San Francisco, CA 94118

¹ HarperCollins is committed to accessibility initiatives. Like Open Library, we partner with Benetech and its well-known accessible online library Bookshare. We are also a signing member of the WIPO-affiliated Accessible Books Consortium Charter for Accessible Publishing, and we participate in the ABC's Global Book Service, which serves the print-disabled through authorized libraries and organizations throughout the world. We still must reserve all rights to the extent Open Library's distribution of DAISY files of our books is unauthorized and is not exempt from infringement under Section 121 of the Copyright Act.

EXHIBIT A











1. MAP OF BONES by James Rollins

https://openlibrary.org/works/OL5727600W/Map_of_bones

EDITION		READ	BORROW	BUY
	2006, Avon Books Map of bones in English	DAISY	This eBook is checked out. You'll be next in line. Join waiting list Physical copy via WorldCat	Amazon Better World Books
	2004, Morrow Map of bones in English - 1st ed.	DAISY	This eBook is checked out. Readers waiting for this title: 1 Join waiting list Physical copy via WorldCat	Amazon Better World Books
	2005, Thorndike Press Map of bones in English	DAISY	Read in-browser or download the ePub / PDF from Internet Archive Borrow eBook Physical copy via WorldCat	Amazon Better World Books

2. THE PURPOSE DRIVEN LIFE by Rick Warren

https://openlibrary.org/works/OL16335306W/The_Purpose-Driven_Life

	2003, Zondervan Publishing House Purpose-driven Life Paperback	DAISY 	Physical copy via WorldCat	Amazon Better World Books
	2002, Zondervan The purpose driven life in English	DAISY 	Read in-browser or download the ePub / PDF from Internet Archive Borrow eBook Physical copy via WorldCat	Amazon Better World Books
	2002, Zondervan The purpose-driven life in English	DAISY 	Read in-browser or download the ePub / PDF from Internet Archive Borrow eBook Physical copy via WorldCat	Amazon Better World Books
	2004, Inspirio The purpose driven life in English	DAISY 	Read in-browser or download the ePub / PDF from Internet Archive Borrow eBook Physical copy via WorldCat	Amazon Better World Books
	October 1, 2002, Zondervan The Purpose-Driven Life Hardcover in English - 1st ed edition	DAISY 	This eBook is checked out. You'll be next in line. Join waiting list Physical copy via WorldCat	Amazon Better World Books

3. DO NOT DISTURB by Christie Ridgway
https://openlibrary.org/works/OL554456W/Do_not_disturb

EDITION



2004, Avon Books
[Do not disturb](#)
in English

READ

DAISY

Read in-browser or download the ePub / PDF from Internet Archive

Borrow eBook

Physical copy via WorldCat

BORROW

BUY

Amazon
Better World Books

4. GOOD TO GREAT AND THE SOCIAL SECTORS by Jim Collins
https://openlibrary.org/works/OL3486273W/Good_to_great_and_the_social_sectors

Good to great and the social sectors
why business thinking is not the answer : a monograph to accompany Good to great : why some companies make the leap--and others don't
Jim Collins.
Published 2005 by J. Collins in [Boulder, Colo.].
Written in English.

Edition Notes
Includes bibliographical references (p. [36]).

Classifications
Dewey Decimal Class 658
Library of Congress HD57.7 .C6452 2005

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